

§ 73.1

10 CFR Ch. I (1–10 Edition)

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APPENDIX I TO PART 73—CATEGORY 1 AND 2 RADIOACTIVE MATERIALS

AUTHORITY: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

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GENERAL PROVISIONS

§ 73.1 Purpose and scope.

(a) *Purpose.* This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft or diversion of special nuclear material. Licensees subject to the provisions of § 73.20 (except for fuel cycle licensees authorized under Part 70 of this chapter to receive, acquire, possess, transfer, use, or deliver for transportation formula quantities of strategic special nuclear material), §§ 73.50, and 73.60 are exempt from §§ 73.1(a)(1)(i)(E), 73.1(a)(1)(iii),

73.1(a)(1)(iv), 73.1(a)(2)(iii), and 73.1(a)(2)(iv). Licensees subject to the provisions of § 72.212 are exempt from § 73.1(a)(1)(iv).

(1) *Radiological sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions, by an adversary force capable of operating in each of the following modes: A single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or more individuals attacking through multiple entry points, or individuals attacking through separate entry points, with the following attributes, assistance and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack;

(B) Active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance;

(C) Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system; and

(E) Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment to the proximity of vital areas; and

(ii) An internal threat; and

(iii) A land vehicle bomb assault, which may be coordinated with an external assault; and

(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault; and

(v) A cyber attack.

(2) *Theft or diversion of formula quantities of strategic special nuclear material.*

(i) A determined violent external assault, attack by stealth, or deceptive actions, including diversionary actions,

by an adversary force capable of operating in each of the following modes: a single group attacking through one entry point, multiple groups attacking through multiple entry points, a combination of one or more groups and one or individuals attacking through multiple entry points, or individuals attacking through separate entry points, with the following attributes, assistance and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals, willing to kill or be killed, with sufficient knowledge to identify specific equipment or locations necessary for a successful attack;

(B) Active (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack) or passive (e.g., provide information), or both, knowledgeable inside assistance;

(C) Suitable weapons, including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safe-guards system;

(E) Land and water vehicles, which could be used for transporting personnel and their hand-carried equipment; and

(ii) An internal threat; and

(iii) A land vehicle bomb assault, which may be coordinated with an external assault; and

(iv) A waterborne vehicle bomb assault, which may be coordinated with an external assault; and

(v) A cyber attack.

(b) *Scope.* (1) This part prescribes requirements for:

(i) The physical protection of production and utilization facilities licensed under parts 50 or 52 of this chapter,

(ii) The physical protection of plants in which activities licensed pursuant to part 70 of this chapter are conducted, and

(iii) The physical protection of special nuclear material by any person who, pursuant to the regulations in part 61 or 70 of this chapter, possesses or uses at any site or contiguous sites

subject to the control by the licensee, formula quantities of strategic special nuclear material or special nuclear material of moderate strategic significance or special nuclear material of low strategic significance.

(2) This part prescribes requirements for the physical protection of special nuclear material in transportation by any person who is licensed pursuant to the regulations in parts 70 and 110 of this chapter who imports, exports, transports, delivers to a carrier for transport in a single shipment, or takes delivery of a single shipment free on board (F.O.B.) where it is delivered to a carrier, formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance or special nuclear material of low strategic significance.

(3) This part also applies to shipments by air of special nuclear material in quantities exceeding: (i) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (ii) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(4) Special nuclear material subject to this part may also be protected pursuant to security procedures prescribed by the Commission or another Government agency for the protection of classified materials. The provisions and requirements of this part are in addition to, and not in substitution for, any such security procedures. Compliance with the requirements of this part does not relieve any licensee from any requirement or obligation to protect special nuclear material pursuant to security procedures prescribed by the Commission or other Government agency for the protection of classified materials.

(5) This part also applies to the shipment of irradiated reactor fuel in quantities that in a single shipment both exceed 100 grams in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, and have a total radiation dose in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.

(6) This part prescribes requirements for the physical protection of spent nuclear fuel and high-level radioactive

waste stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage (MRS) installation licensed under part 72 of this chapter, or stored at the geologic repository operations area licensed under part 60 or part 63 of this chapter.

(7) This part prescribes requirements for the protection of Safeguards Information (including Safeguards Information with the designation or marking: Safeguards Information—Modified Handling) in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires that information.

(8) This part prescribes requirements for advance notice of export and import shipments of special nuclear material, including irradiated reactor fuel.

(9) As provided in part 76 of this chapter, the regulations of this part establish procedures and criteria for physical security for the issuance of a certificate of compliance or the approval of a compliance plan.

[44 FR 68186, Nov. 28, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 73.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 73.2 Definitions.

As used in this part:

(a) Terms defined in parts 50, 52, and 70 of this chapter have the same meaning when used in this part.

Appropriate Nuclear Regulatory Commission Regional Office listed in appendix A means:

(1) For domestic shipments—the Regional Office within whose region the licensee who is responsible for the physical protection arrangements of the shipment is located.

(2) For export shipments—the Regional Office within whose region the licensee who is responsible for the physical protection arrangements of the shipment is located, and the Regional Office for the region in which the last point of exit of the shipment from the U.S. is located.

(3) For import shipments—the Regional Office within whose region the licensee who is responsible for the physical protection arrangements of

the shipment is located, and the Regional Office for the region in which the first point of entry of the shipment into the U.S. is located.

Armed escort means an armed person, not necessarily uniformed, whose primary duty is to accompany shipments of special nuclear material for the protection of such shipments against theft or radiological sabotage.

Armed response personnel means persons, not necessarily uniformed, whose primary duty in the event of attempted theft of special nuclear material or radiological sabotage shall be to respond, armed and equipped, to prevent or delay such actions.

Authorized individual means any individual, including an employee, a student, a consultant, or an agent of a licensee who has been designated in writing by a licensee to have responsibility for surveillance of or control over special nuclear material or to have unescorted access to areas where special nuclear material is used or stored.

Background check includes, at a minimum, a Federal Bureau of Investigation (FBI) criminal history records check (including verification of identity based on fingerprinting), employment history, education, and personal references. Individuals engaged in activities subject to regulation by the Commission, applicants for licenses to engage in Commission-regulated activities, and individuals who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission are required under § 73.57 to conduct fingerprinting and criminal history records checks before granting access to Safeguards Information. A background check must be sufficient to support the trustworthiness and reliability determination so that the person performing the check and the Commission have assurance that granting individuals access to Safeguards Information does not constitute an unreasonable risk to the public health and safety or the common defense and security.

Bullet/resisting means protection against complete penetration, passage